

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

v

File No. 120673-001

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 14th day of September 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On April 19, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On April 26, 2011, after a preliminary review of the material submitted, the Commissioner accepted the case for external review.

The Commissioner notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on May 5, 2011.

This case involves medical issues. Therefore, the Commissioner assigned the matter to an independent review organization which submitted its analysis and recommendation on May 10, 2011.

II. FACTUAL BACKGROUND

The Petitioner's health care benefits are defined in the BCBSM *Flexible Blue II Individual Market Certificate* (the certificate).

The Petitioner, while pregnant, underwent ultrasound diagnostic medical imaging of her abdomen on September 21, 2009, and had a follow-up ultrasound on September 25, 2009. BCBSM covered the September 21 ultrasound but denied coverage for the one on September 25, stating it was not medically necessary.

The Petitioner appealed the denial through BCBSM's internal grievance process. After a managerial-level conference on January 31, 2011, BCBSM maintained its original position and issued a final adverse determination dated March 7, 2011.

III. ISSUE

Did BCBSM properly deny coverage for the Petitioner's September 25, 2009, ultrasound?

IV. ANALYSIS

Petitioner's Argument

The Petitioner states an unidentified mass was discovered during the first ultrasound. She believes the follow-up ultrasound on September 25, 2009, was medically necessary to ensure that the unidentified mass would not jeopardize her life or health or that of her unborn child. She argues that BCBSM is required to cover the follow-up ultrasound.

BCBSM's Argument

BCBSM states its medical consultants reviewed the documentation provided and determined the second ultrasound was not medically necessary. BCBSM cited this provision in the certificate (p. 8.16) as the basis for its denial:

Medically Necessary

A service must be medically necessary to be covered. . . .

* * *

- **Medical necessity for payment of professional provider services:**

Health care services that a professional provider, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing or treating an illness, injury, disease or its symptoms, and that are:

- In accordance with generally accepted standards of medical practice;

- Clinically appropriate, in terms of type, frequency, extent, site and duration, and considered effective for the member's illness, injury or disease and
- Not primarily for the convenience of the member, professional provider, or other health care provider, and not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of that member's illness, injury or disease.

In its final adverse determination, BCBSM stated there was "no consensus or clear understanding why a second ultrasound was needed four days after the first one."

Commissioner's Review

BCBSM provides coverage for medically necessary services that are listed in the certificate. The question of whether the Petitioner's second ultrasound was medically necessary was presented to an independent medical review organization (IRO) for analysis, as required by Section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6). The IRO reviewer is board certified in obstetrics and gynecology and has been in active practice for more than 15 years. The IRO reviewer's report included the following analysis and determination:

The MAXIMUS physician consultant noted that an anatomic scan was performed on 9/21/09. The MAXIMUS physician consultant indicated that there was a suggestion of low amniotic fluid on this scan. The MAXIMUS physician consultant also indicated that a repeat ultrasound was recommended to further assess the amniotic fluid. The MAXIMUS physician consultant explained that midgestational oligohdemonios [*sic*] is associated with an extremely high prenatal mortality rate. The MAXIMUS physician consultant also explained that when oligohydramnios is suspected, a targeted ultrasound is performed to confirm the diagnosis and look for fetal causes of the condition. The MAXIMUS physician consultant indicated that therefore, a repeat ultrasound to diagnose and potentially treat the member's condition. [Citations omitted]

Pursuant to the information set forth above and available documentation, the MAXIMUS physician consultant determined that ultrasound that the member underwent on 9/25/09 was medically necessary for diagnosis and treatment of her condition.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO's recommendation is afforded deference by the Commissioner. In a decision to uphold or reverse an adverse determination the Commissioner, must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's

recommendation.” MCL 550.1911(16) (b). The IRO reviewer’s analysis is based on extensive expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case.

The Commissioner therefore finds that the Petitioner’s September 25, 2009, ultrasound was medically necessary and is a covered benefit.

V. ORDER

BCBSM’s March 7, 2011, final adverse determination is hereby reversed. BCBSM is required to cover the Petitioner’s ultrasound on September 25, 2009. BCBSM shall provide coverage within 60 days of the date of this Order and shall, within seven (7) days of providing coverage, furnish the Commissioner with proof it has implemented this Order.

To enforce this Order, the Petitioner may report any complaint regarding implementation to the Office of Financial and Insurance Regulation, Health Plans Division, toll free at (877) 999-6442.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner